

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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CONLEY MONK, KEVIN MARRET, GEORGE	)	)	
SIDERS, JAMES COTTAM, JAMES DAVIS,	)	)	
VIETNAM VETERANS OF AMERICA,	)	)	
VIETNAM VETERANS OF AMERICA	)	)	
CONNECTICUT STATE COUNCIL, and	)	)	
NATIONAL VETERANS COUNCIL	)	)	
FOR LEGAL REDRESS, on behalf	)	)	
of themselves and all others similarly situated,	)	)	
	)	)	COMPLAINT
<i>Plaintiffs,</i>	)	)	
	)	)	
v.	)	)	
	)	)	
RAY MABUS, Secretary of the Navy, JOHN	)	)	March 3, 2014
McHUGH, Secretary of the Army, and DEBORAH	)	)	
LEE JAMES, Secretary of the Air Force,	)	)	
	)	)	
<i>Defendants.</i>	)	)	
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Plaintiffs Conley Monk, Kevin Marret, George Siders, James Cottam, James Davis, Vietnam Veterans of America (“VVA”), Vietnam Veterans of America Connecticut State Council (“VVA-CT”), and the National Veterans Council for Legal Redress (“NVCLR”), through counsel and on behalf of themselves and all others similarly situated, allege the following facts upon information and belief:

**COMPLAINT**

1. During the Vietnam War Era, hundreds of thousands of men and women joined the United States military and were deployed to Vietnam. Many of these servicemembers faced difficult, and sometimes horrific, experiences in the line of duty. Tens of thousands died, and still more were physically or psychologically wounded.

2. Not all of these injuries were visible, such as Post-Traumatic Stress Disorder (“PTSD”), which was not even fully recognized by the medical community until 1980, well after the completion of the Vietnam War.

3. Conley Monk, Kevin Marret, George Siders, James Cottam, James Davis (the “individual Plaintiffs”) and members of VVA, VVA-CT, and NVCLR served in combat in Vietnam and developed PTSD before the condition was well understood or recognized by the medical community.

4. As a result of their then-undiagnosed PTSD, the individual Plaintiffs and VVA, VVA-CT, and NVCLR members were subsequently unable to perform their assigned military duties. Eventually, each was discharged under other than honorable conditions (sometimes also referred to as an undesirable discharge) for misconduct attributable to undiagnosed PTSD. The United States military has near-categorically refused to correct these wrongful discharges.

5. In the decades since their service, the individual Plaintiffs and VVA, VVA-CT, and NVCLR members have experienced such hardships as homelessness, prolonged unemployment, and severely damaged family and social relationships. Isolated and impoverished, they have struggled to cope not only with their war wounds, but also with the shame of other than honorable discharges. Because of their stigmatizing discharges, many of these veterans are ineligible for the disability compensation and other benefits that their military service otherwise earned them.

6. Medical research has illuminated the causes and severe consequences of PTSD, and the military now has systems in place to identify and treat the injury. For instance, today servicemembers reasonably alleging PTSD must receive a medical examination and, potentially, a medical discharge. However, the Secretaries of the Army, Navy, and Air Force have failed to

upgrade the discharge statuses of the tens of thousands of Vietnam veterans with PTSD.

7. The Secretaries have also refused to put in place medically appropriate standards to ensure adequate consideration of PTSD when the individual Plaintiffs and VVA, VVA-CT, and NVCLR members have applied to their respective branch's record corrections board ("Board"), which is empowered to upgrade discharge statuses. In so doing, the Secretaries have violated the Administrative Procedure Act, the Fifth Amendment, and Section 504 of the Rehabilitation Act of 1973.

8. The individual Plaintiffs, VVA, VVA-CT, and NVCLR bring this action on behalf of themselves; VVA, VVA-CT, and NVCLR members; and a class of individuals similarly situated, in order to obtain declaratory and injunctive relief to remedy these violations.

9. Many Vietnam veterans who suffer from PTSD and received other than honorable discharges are now elderly, disabled, and indigent. They seek the implementation of medically appropriate standards for consideration of their PTSD in the discharge upgrade review process. They also seek upgrades in their discharge statuses that will allow them, in their final years, to receive the respect, recognition, and assistance that their service long ago earned.

#### **JURISDICTION AND VENUE**

10. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, and 2201. This action arises under the Fifth Amendment of the U.S. Constitution; the Administrative Procedure Act, 5 U.S.C. § 706 (2012); and the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) (2012).

11. Venue lies in this district pursuant to 28 U.S.C. § 1391(e)(1)(C). Plaintiff Conley Monk resides in the district, VVA has chapters and members (including at least one member of the proposed class) in the district, and both VVA-CT and NVCLR are located in the district and have members (including at least one member of the proposed class) in the district. No real

property is involved, and Defendants are sued in their official capacities as officers of the United States.

**PARTIES**

12. Conley Monk is a Connecticut resident and veteran of the U.S. Marine Corps.

13. Kevin Marret is an Indiana resident and veteran of the U.S. Marine Corps.

14. George Siders is a Georgia resident and veteran of the U.S. Marine Corps.

15. James Cottam is a California resident and veteran of the U.S. Army.

16. James Davis is a New York resident and veteran of the U.S. Army.

17. Founded in 1978, VVA is the only national Vietnam veterans' organization congressionally chartered and dedicated to the needs of Vietnam veterans and their families. VVA's membership consists of approximately 70,000 Vietnam veterans, including Vietnam veterans from the Army, Navy, Air Force, and Marine Corps. VVA is a nonprofit corporation organized under the laws of New York and headquartered in Maryland.

18. VVA-CT is one of VVA's forty-eight State Councils. VVA-CT represents members of VVA's five Connecticut chapters and members at large, including Vietnam veterans from the Army, Navy, Air Force, and Marine Corps. VVA-CT is based in New Britain, CT.

19. NVCLR is a Connecticut membership-based organization that seeks to assist veterans with less than honorable discharges and to educate the public about the plight of these veterans. NVCLR is based in New Haven, CT.

20. Ray Mabus, Secretary of the Navy, is sued in his official capacity. He is empowered to act through the Board for Correction of Naval Records ("BCNR") to change any military record of a former member of the Navy or Marine Corps when necessary to correct an error or remove an injustice. Mr. Mabus is required to establish procedures for the correction of

military records.

21. Defendant John McHugh, Secretary of the Army, is sued in his official capacity. He is empowered to act through the Army Board for Correction of Military Records (“ABCMR”) to change any military record of a former member of the Army when necessary to correct an error or remove an injustice. Mr. McHugh is required to establish procedures for the correction of military records.

22. Defendant Deborah Lee James, Secretary of the Air Force, is sued in her official capacity. She is empowered to act through the Air Force Board for Correction of Military Records (“AFBCMR”) to change any military record of a former member of the Air Force when necessary to correct an error or remove an injustice. Ms. James is required to establish procedures for the correction of military records.

### **FACTS AND PROCEEDINGS**

#### **Allegations as to Class Representative Conley Monk**

23. Mr. Monk voluntarily joined the U.S. Marine Corps in November 1968 at age twenty and completed boot camp at Parris Island, South Carolina. His father served in the U.S. Army during World War II and participated in the Normandy invasion.

24. Mr. Monk served overseas from July 1969 to September 1970 with the 9th Motor Transport Battalion, 3rd Marine Division. He received a Rifle Marksman Badge, National Defense Service Medal, Vietnam Service Medal with one star, and Vietnam Combat Medal with Device.

25. In the course of his military service he suffered a number of traumatic events that led to his development of PTSD.

26. On July 20, 1969, the day that Mr. Monk arrived in Da Nang, Vietnam, he and

other men on his plane were barraged by enemy mortar rounds as they disembarked.

27. The next morning, within hours of arriving in Quang Tri, Mr. Monk's unit was gassed. Mr. Monk had not yet been issued a gas mask, and he thought he was going to die.

28. At Quang Tri, Mr. Monk and his unit were regularly attacked. The enemy used guerrilla tactics and snipers that were difficult to defend against. At night, enemy soldiers tried to infiltrate the base. Some were Vietnamese who worked at the base in the daytime. As a result, Mr. Monk learned to distrust his surroundings even away from the battle zone.

29. Racial tensions within Mr. Monk's unit exacerbated his stress. African American soldiers like Mr. Monk were often punished more harshly for similar infractions than white soldiers. The Department of Defense's ("DoD") 1972 Task Force on the Administration of Military Justice in the Armed Forces confirmed this practice, finding that African American servicemembers faced systemic discrimination and received disproportionate punishment, including in their discharge statuses.

30. Despite these hardships, Mr. Monk performed his duties faithfully and in October 1969 was promoted to lance corporal.

31. In November 1969, Mr. Monk's battalion was pulled out of Vietnam. Mr. Monk received a high proficiency rating for his conduct and performance in the field. He was then stationed in Okinawa, Japan.

32. As is common for those suffering from PTSD, Mr. Monk began to fully experience the onset of what was later diagnosed as PTSD only months after first enduring traumatic events—that is, when he arrived in Okinawa. Mr. Monk heard daily rumors that his unit was scheduled to return to a combat environment, and he was terrified to go back.

33. Mr. Monk began to experience flashbacks. He self-medicated with drugs, which

he could obtain only by leaving the base. As a result, he went absent without leave (“AWOL”) for several short periods and one longer period of thirty-five days, during which he took drugs to cope with the symptoms of his then-undiagnosed PTSD.

34. Mr. Monk displayed hypervigilance and a constant state of fear as a result of his PTSD. While in Okinawa, he had two altercations, including one with a commanding officer who approached him at night, grabbed him, and mistakenly accused him of stealing.

35. Mr. Monk was put in the base brig and was told that he would stay there until he signed papers agreeing to an other than honorable discharge and waiving his right to a court-martial. He was also told that if he signed the papers, he would be able to go home.

36. Depressed, symptomatic with PTSD, and suffering from opiate withdrawal, Mr. Monk did not have the capacity to understand the long-term consequences of executing his discharge papers. Instead, he simply signed them.

37. In 1971, the Veterans Administration denied Mr. Monk’s application for disability compensation benefits because of his other than honorable discharge.

38. In July 1971, Mr. Monk applied pro se to the Naval Discharge Review Board (“NDRB”) for a discharge upgrade; in July 1976, he applied for an upgrade from the BCNR; and in April 1979, he requested secretarial review of the NDRB’s adverse decision. In each instance, he was denied.

39. In December 2011, a Yale University psychiatrist diagnosed Mr. Monk with PTSD that is attributable to his service. Mr. Monk’s misconduct that led to his other than honorable discharge is also attributable to the PTSD he developed during the course of his military service. Under current procedures, prior to his separation, the U.S. Marine Corps would have provided Mr. Monk a medical examination, diagnosed him with PTSD, and likely given

him a medical discharge instead of the other than honorable discharge he actually received.

40. In July 2012, Mr. Monk applied to the BCNR for a discharge upgrade, citing his diagnosis of PTSD and his lifelong advocacy on behalf of Vietnam veterans.

41. Due to the NDRB and BCNR determinations, Mr. Monk is generally disqualified from receiving U.S. Department of Veterans Affairs (“VA”) benefits. In addition, PTSD has impaired his ability to find employment and maintain stable relationships. For more than forty years, he has borne the stigma and shame of an other than honorable discharge.

42. More than eighteen months have passed since Mr. Monk submitted his application and he has not received a decision from the BCNR, in violation of the statutory deadline for decision. Accordingly, Mr. Monk has exhausted all administrative remedies available to him and his application has been constructively denied. Mr. Monk now timely petitions for review of the BCNR’s failure to upgrade his discharge status.

#### **Allegations as to Class Representative Kevin Marret**

43. Kevin Marret voluntarily joined the U.S. Marine Corps and began basic training in January 1969 at age eighteen. He was deployed to Vietnam from October 1969 to October 1970. He received the National Defense Service Medal, the Vietnam Service Medal with four bronze service stars, the Marksman Rifle Badge, the Vietnam Campaign Medal, a Republic of Vietnam Meritorious Unit Citation (Gallantry Cross Medal Color with Palm), and a Republic of Vietnam Meritorious Unit Citation (Civil Actions Medal, First Class Color with Palm).

44. During his deployment, Mr. Marret witnessed and experienced numerous horrific and sometimes life-threatening incidents that caused him to develop PTSD.

45. A few months into his time in Quang Tri, Mr. Marret was approximately 100 yards from a bridge when a satchel charge exploded under the bridge. He heard screams from the

Marines who had been guarding the bridge. The next morning, a corpsman described to Mr. Marret how he had been forced to remove wooden splinters and other debris from the bodies of the servicemembers, who had not received morphine or other painkillers.

46. Several months later, Mr. Marret was half-asleep, leaning against a tire, when he awoke to the sound of incoming rounds. He watched as a mortar exploded near another Marine. Mr. Marret took cover under a truck. Weeks later, while helping to repair the same truck, its driver discovered shrapnel from the mortar attack embedded in the vehicle's tire and showed it to Mr. Marret. Mr. Marret realized he had barely avoided being hit.

47. These traumatic experiences led to the deterioration of Mr. Marret's mental condition. In June 1970, while still in Vietnam, he began to experience blackouts. The first time it happened, he felt as though he were falling down a well, saw spots, and passed out. Later, he would have nightmares, sweating and waking up screaming, and he would sometimes black out or convulse, which significantly impaired his sleep. He sought treatment for these conditions.

48. During the last months of his deployment, Mr. Marret took fire several times while riding in government vehicles. He could feel bullets whistling past his head. Despite his blackouts, Mr. Marret completed his tour and returned to the United States in October 1970.

49. Mr. Marret was stationed at Beaufort Air Station in South Carolina. He struggled with this placement because the physical environment reminded him of Vietnam. Mr. Marret continued to black out, and he also struggled with anxiety, panic attacks, and abdominal cramps.

50. Mr. Marret sought treatment for some of these symptoms, but he was scared of seeking help too often. He worried he would be labeled a malingerer—a "sick bay commando."

51. Mr. Marret also struggled with hypervigilance that interfered with his ability to carry out his assigned military tasks. When he was placed on guard duty at the air station, he

would check and re-check door locks. He felt perpetually unsafe on the base.

52. Seeking relief from his mental and physical pain, Mr. Marret began leaving the base for days at a time without permission. He retreated to a cluster of nearby islands to be alone.

53. Mr. Marret missed work because of his continued problems with anxiety attacks and abdominal cramps. When he tried to tell his superiors that he had missed work because he had medical problems, they accused him of lying.

54. On or about August 1, 1972, Mr. Marret left the base without permission and remained away for four months. He obtained a job at a nearby car dealership but continued to struggle with anxiety, blackout spells, and panic attacks. Eventually someone reported him, and he was taken back to the base. He was locked up for several weeks before being given an other than honorable discharge on February 23, 1973.

55. On April 4, 1977, the DoD directed the service branches to review less than fully honorable administrative discharges issued in a time period that included Mr. Marret's discharge through a program known as the DoD Special Discharge Review Program ("SDRP"). Servicemembers had to apply for review under this program. Mr. Marret timely filed, and the SDRP upgraded his discharge status to general (under honorable conditions).

56. Later that same year, Congress enacted Pub. L. 95-126, providing that no veteran whose discharge was upgraded by the SDRP was eligible for Veterans Administration benefits unless the upgrade was affirmed under uniform standards.

57. On May 20, 1978, the NDRB refused to affirm the upgrade of Mr. Marret's discharge status under uniform standards. He did not receive notification of this decision and was unaware it would become final if he failed to appeal.

58. Mr. Marret was first diagnosed with PTSD in 1994. His PTSD diagnosis was

subsequently affirmed by psychiatric and medical examinations in 1997 and 2012. The psychiatrist who examined Mr. Marret in 1997 concluded that his mental condition likely resulted from his service in Vietnam and had caused him to go AWOL.

59. The misconduct that led to Mr. Marret's other than honorable discharge is attributable to the PTSD he developed during the course of his military service. Under current procedures, prior to his discharge, the U.S. Marine Corps would have provided a medical examination, diagnosed him with PTSD, and likely given him a medical discharge instead of the other than honorable discharge he actually received.

60. Mr. Marret applied to the BCNR for a discharge upgrade in 1999, 2007, 2010, and 2012. In each application, he asserted that his other than honorable discharge resulted from his PTSD. Each of these applications was denied.

61. Due to the BCNR's determinations, Mr. Marret is generally disqualified from receiving VA benefits. In addition, PTSD has impaired his ability to find employment and at times has substantially limited his ability to care for himself. He also suffers spells of uncontrollable anger, and has experienced extreme anxiety around people he does not know, which has made it hard to be in public. Mr. Marret has moved often, seeking relief through a change in scenery. For more than forty years, he has borne the stigma and shame of an other than honorable discharge.

62. Mr. Marret has exhausted his administrative remedies and now timely petitions for review of the BCNR's 2010 and 2012 denials of his discharge upgrade applications.

#### **Allegations as to Class Representative George Siders**

63. George Siders voluntarily enlisted in the U.S. Marine Corps in November 1967 at age eighteen. He was deployed to Vietnam in May 1968, where he served as a rifleman in the 1st

Platoon, Kilo Company, 3rd Battalion, 9th Marine Regiment.

64. Over his years of honorable service, Mr. Siders was awarded the Purple Heart. He was also awarded the National Defense Service Medal, Vietnam Service Medal, Vietnam Campaign Medal, and Combat Action Ribbon. He received the Rifle Sharpshooter Badge and Pistol Marksman Badge. His unit received numerous citations, including the Presidential Unit Citation with one bronze star, the Navy Unit Commendation with two bronze service stars, the Meritorious Unit Commendation with one bronze service star, and the Asiatic-Pacific Campaign Medal with four bronze stars.

65. Mr. Siders participated in approximately twenty-six major operations while in Vietnam. During these operations, Mr. Siders experienced many horrific and life-threatening events, including multiple helicopter crashes, which caused his development of PTSD.

66. Mr. Siders' company often came under heavy artillery fire and was involved in hand-to-hand combat. Mr. Siders was required to retrieve the bodies of enemies he killed, so that the United States military could keep a count for each operation.

67. In one firefight, Mr. Siders was struck by shrapnel, which badly injured his forearms. He was allowed to recover for several weeks, but was eventually sent back into action. Mr. Siders was awarded the Purple Heart for these injuries.

68. In January 1969, Mr. Siders was promoted to corporal (E-4). He was rotated out of Vietnam in June 1969 and stationed at Marine Corps Base Camp Lejeune in North Carolina.

69. In the United States, Mr. Siders began suffering from terrible nightmares about his time in Vietnam, which significantly impaired his sleep. The faces of enemies he had killed and fellow servicemembers he had watched die haunted him. Mr. Siders could not be around large groups of people and would lose his temper at a slight provocation. He struggled to

perform his assigned duties at Camp Lejeune and had trouble thinking clearly and concentrating.

70. Mr. Siders later learned that his nightmares, anxiety, and anger are symptoms of PTSD that he developed as a result of his service in Vietnam. However, PTSD was not yet recognized as a medical disorder during his time in the military, and the military offered Mr. Siders no assistance with his difficult transition back from war.

71. In 1970, while stationed at Camp Lejeune and suffering from undiagnosed PTSD, Mr. Siders went AWOL for twenty-seven days. After he returned, Mr. Siders was sentenced by special court-martial to thirty days of confinement at hard labor, a reduction in rank, and forfeitures of pay.

72. Shortly thereafter, Mr. Siders again felt the need to leave base. He requested permission to use his accrued leave. His commanding officers refused his requests, but Mr. Siders left base anyhow to be with his family.

73. The FBI arrested Mr. Siders after he had returned to base, but was still considered to be on unauthorized leave because he had failed to report for his assigned duties. Mr. Siders was told that he could take a “good of the service” discharge in lieu of court-martial. He was also informed that while a court-martial conviction would keep him from his family, a good of the service discharge would allow him to return home and would be upgraded to general under honorable conditions after six months. Mr. Siders understood that his discharge status would not impair his eligibility for Veterans Administration benefits.

74. On May 5, 1971, Mr. Siders received an other than honorable discharge from the U.S. Marine Corps. He did not realize until much later that his discharge status was not general under honorable conditions, and that his discharge status severely curtailed his ability to receive benefits to which his service otherwise entitled him.

75. In 2003, Mr. Siders applied for a discharge upgrade from the BCNR. Taking into account his reasons for unauthorized leave, his service in a combat zone, and his subsequent good citizenship, the BCNR approved Mr. Siders' request.

76. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) routinely reviews and signs off on BCNR decisions. Robert T. Cali, Assistant General Counsel of the Navy (Manpower and Reserve Affairs), upon reviewing the BCNR's decision in Mr. Siders' case, crossed out "approved" and wrote "disapproved" above his signature.

77. After Mr. Cali overruled the BCNR's decision, the Board failed to advise Mr. Siders of his options for appeal or further review. Nonetheless, Mr. Siders submitted multiple requests for reconsideration to the BCNR. Each time, the materials Mr. Siders submitted were returned to him without action by the BCNR.

78. Mr. Siders was diagnosed with PTSD and has been treated for it since 2004. During the decades before his PTSD diagnosis, his symptoms would appear unexpectedly, arising from small startles or little things people said.

79. The misconduct that led to Mr. Siders' other than honorable discharge is attributable to the PTSD he developed during the course of his military service. Under current procedures, prior to his discharge, the U.S. Marine Corps would have provided a medical examination, diagnosed him with PTSD, and likely given him a medical discharge instead of the other than honorable discharge he actually received.

80. Most recently, in February 2012, Mr. Siders applied for a discharge upgrade with the BCNR. He submitted new and material evidence attesting to his honorable service in Vietnam, his good citizenship in civilian life, and his struggles with PTSD. The BCNR denied his application.

81. Due to the BCNR's decision, Mr. Siders is generally disqualified from receiving VA benefits. As a result of untreated PTSD, his relationships with his wife and children have suffered and he has experienced difficulties at work. In addition, PTSD has at times substantially limited his ability to care for himself. For more than forty years, he has borne the stigma and shame of an other than honorable discharge.

82. Mr. Siders has exhausted his administrative remedies and now timely petitions for review of the BCNR's denial of his discharge upgrade application.

#### **Allegations as to Class Representative James Cottam**

83. James Cottam voluntarily enlisted in the Army in November 1968 at age seventeen. He was deployed to Vietnam from October 1969 to November 1970.

84. Mr. Cottam received the National Defense Service Medal, the Vietnam Service Medal with one bronze service star, the Vietnam Campaign Medal, the Army Commendation Medal, and the Rifle Sharpshooter Badge.

85. In Vietnam, Mr. Cottam witnessed and lived through numerous traumatic events that caused the development of his PTSD. He was particularly disturbed by the death of a Vietnamese child from U.S. artillery fire and by the sight of the child's mother screaming and crying as she dragged the child's body away. Mr. Cottam was eighteen years old at the time.

86. Upon his return to the United States, Mr. Cottam began suffering from severe nightmares and night sweats, which significantly impaired his sleep.

87. Despite his experiences in Vietnam, Mr. Cottam maintained a desire to serve his country. He reenlisted in the Army in December 1972, and was assigned to the 9th Infantry Division in Fort Lewis, WA. At that time, this Division was an Army experiment made up primarily of seventeen-year-olds. The youthfulness of this Division meant that the military

structure and control Mr. Cottam had expected were lacking.

88. Mr. Cottam nevertheless performed well and the Army promoted him to sergeant (E-5) in September 1973.

89. Despite his promotion, Mr. Cottam struggled with the lack of structure in the 9th Infantry Division. He suffered nightmares, night sweats, and heightened irritability. As a result, Mr. Cottam went AWOL from January-May 1974. When he reported back for duty, his rank was reduced to private (E-1). He received an other than honorable discharge on August 20, 1974.

90. In 1982 and again in 1985, the Veterans Administration diagnosed Mr. Cottam with PTSD attributable to his military service. Mr. Cottam also has service-connected heart disease, requiring five heart surgeries from 1999-2005, including a quintuple bypass.

91. Because of the severity of Mr. Cottam's PTSD, in 2002 the VA gave him a 100% service-connected disability rating for PTSD. In addition, he has a 100% disability rating for arteriosclerosis heart disease, 40% for diabetes mellitus, and 10% for hypertension.

92. The misconduct that led to Mr. Cottam's other than honorable discharge is attributable to the PTSD he developed during the course of his military service. Under current procedures, prior to his discharge, the Army would have provided Mr. Cottam a medical examination, diagnosed him with PTSD, and likely given him a medical discharge instead of the other than honorable discharge he actually received.

93. Mr. Cottam's other than honorable discharge precludes him from receiving certain benefits that his service otherwise earned. In addition, PTSD has sometimes substantially limited his ability to care for himself. He has struggled to control his anger, and his family states that he has been irritable. For more than forty years, he has borne the stigma and shame of an other than honorable discharge.

94. Mr. Cottam applied to the ABCMR for a discharge upgrade in 2009. He asserted that his discharge should be upgraded because it resulted from PTSD attributable to service. He also sought to restore his rank of sergeant, E-5. The ABCMR denied his application.

95. Mr. Cottam has exhausted his administrative remedies and timely petitions this Court for review of the ABCMR's 2009 denial of his application to upgrade his discharge status.

#### **Allegations as to Class Representative James Davis**

96. Mr. James Davis voluntarily enlisted in the U.S. Army in February 1970 at age seventeen. He deployed to Vietnam from January 1971 to December 1971.

97. While in Vietnam Mr. Davis was assigned to work as a Supply Clerk at Firebase Phu Bai. During the course of performing his military duties, he suffered a number of traumatic events that caused his development of PTSD.

98. Mr. Davis' location was the target of regular shelling by the North Vietnamese. He lived in a constant state of readiness, prepared to find cover from incoming fire at any moment. He heard, felt, and watched mortars explode in his area throughout his time in Vietnam.

99. One of Mr. Davis' tasks was to identify, sort, and bag bodies and body parts that were brought to the Firebase by a chopper. On several occasions he processed the bodies of friends he had made in the military.

100. Mr. Davis was also responsible for delivering supplies from the interior to the perimeter of the Firebase. On one re-supply mission, he was sitting behind a tree for cover while he ate breakfast just before dawn. A First Lieutenant who had just arrived in Vietnam stood up after finishing his own breakfast and lit a cigarette. Before anyone could tell him to get down, the First Lieutenant was shot in the head by a sniper and killed. Mr. Davis was sitting so close to him that portions of the First Lieutenant's skull and brain fell into his breakfast.

101. Mr. Davis found it impossible to stop thinking about these and other incidents. He struggled to sleep and to perform his assigned duties during the rest of his time in Vietnam.

102. After he returned to the United States, Mr. Davis continued to struggle with the memories of what he had witnessed. He experienced intense nightmares and insomnia, which significantly impaired his sleep, and he began self-medicating with alcohol and other drugs.

103. Mr. Davis knew that something was wrong and repeatedly put his name on the sick call list at Ft. Bragg to seek help with his nightmares and other service-related problems. Although white soldiers received treatment, the military denied Mr. Davis, an African American soldier, the opportunity to consult with a doctor or psychologist about his medical concerns.

104. Eventually Mr. Davis' nightmares, insomnia, and other effects of his time in Vietnam made it impossible for him to perform his military duties. He left Ft. Bragg without authorization and found a job elsewhere in North Carolina before returning home to Memphis, TN. He was arrested in Memphis in November 1973 and returned to military custody.

105. An officer told Mr. Davis that he would be court-martialed, but he does not recall seeing a judge or meeting with counsel. Instead, the officer handed him papers to sign and told him that he would be discharged. No one explained to him what his discharge meant, or gave him the opportunity to consult with an attorney. According to his records, Mr. Davis received an other than honorable discharge in lieu of a court-martial.

106. Mr. Davis continued to struggle with nightmares and substance abuse after his discharge from the military. In 2011, a VA psychiatrist diagnosed him with PTSD stemming from his experiences in Vietnam. Prior to that time, Mr. Davis did not know that his problems were caused by a recognized medical ailment.

107. The misconduct that led to Mr. Davis' other than honorable discharge is

attributable to the PTSD he developed during the course of his military service. Under current procedures, prior to his discharge, the Army would have provided a medical examination, diagnosed him with PTSD, and likely given him a medical discharge instead of the other than honorable discharge he actually received.

108. Mr. Davis applied to the ABCMR for a discharge upgrade in 2012. He asserted that his discharge status should be upgraded because his discharge resulted from then-undiagnosable, untreated PTSD attributable to service.

109. The ABCMR denied Mr. Davis' application on February 20, 2013. In reaching this conclusion, the ABCMR stated that "there is no evidence which shows the applicant was diagnosed with PTSD or any other mental condition prior to discharge on 12 February 1974." The ABCMR's decision failed to recognize that Mr. Davis could not have received a diagnosis prior to his discharge because PTSD had not yet been recognized as a medical diagnosis.

110. Due to the ABCMR's determination, Mr. Davis remains generally disqualified from receiving VA benefits. In addition, PTSD has impaired his ability to find employment, maintain stable housing and relationships, and at times has substantially limited his ability to take care of himself. For more than forty years, he has borne the stigma and shame of an other than honorable discharge.

111. Mr. Davis has exhausted his administrative remedies and timely petitions for review of the ABCMR's failure to consider his application to upgrade his discharge status.

#### **Allegations as to VVA**

112. VVA's mission is to promote and support the full range of issues important to Vietnam veterans, to create a new identity for this generation of veterans, and to change the public perception of Vietnam veterans. VVA promotes this mission in part by advocating for the

rights of Vietnam veterans with PTSD and other mental health disabilities through policy advocacy, legislative advocacy, and litigation.

113. VVA has been injured by Defendants' failure to utilize consistent and medically appropriate standards for considering the impact of PTSD attributable to service when determining whether to upgrade the discharge statuses of Vietnam War Era veterans, and by Defendants' failure to upgrade the discharge statuses of members of the proposed class. VVA's interests are adversely affected because it must expend resources advocating for VVA members and other Vietnam veterans who are harmed by Defendants' actions.

114. VVA also brings this action on behalf of its members who have been adversely affected by Defendants' failure to properly account for PTSD in their discharge review processes. VVA is a § 501(c)(19) tax-exempt veterans' organization and has over 70,000 members. Membership is open to veterans of the U.S. Armed Forces who served on active duty in the Republic of Vietnam between February 28, 1961 and May 7, 1975, or in any duty location between August 5, 1964 and May 7, 1975.

115. Members are organized under 650 local chapters and forty-eight State Councils. Members can pay dues annually or every three years. VVA also provides members with the opportunity to pay onetime dues to become lifetime members. Delegates to VVA's National Convention vote in the election of the organization's officers. Each VVA member, except honorary members, is entitled to one vote on all business matters of his/her local chapter.

116. Many VVA members received an other than honorable discharge based on conduct attributable to their undiagnosed PTSD from service in Vietnam. Many VVA members have applied for a discharge upgrade to the Boards based on PTSD, but have been summarily denied. VVA's membership includes members of the proposed class who would have individual

standing to pursue the claims set forth below.

117. Because of the nature of the claims alleged in this complaint and the nature of the relief sought, the individual participation of each affected VVA member is not indispensable to the proper resolution of this lawsuit.

#### **Allegations as to VVA-CT**

118. VVA-CT is one of forty-eight State Councils of VVA. Its purpose is to promote the principles and policies of VVA, including advocacy for Vietnam veterans with PTSD.

119. VVA-CT represents members of the state's local VVA chapters as well as at-large members, even if they do not live in Connecticut.

120. Some VVA-CT members received an other than honorable discharge based on conduct attributable to their undiagnosed PTSD from service in Vietnam. VVA-CT members have applied to the Boards to request a discharge upgrade based on PTSD, but have been denied.

121. VVA-CT brings this action on its own behalf and also on behalf of its members. VVA-CT's membership includes members of the proposed class who would have individual standing to pursue the claims set forth below. Because of the nature of the claims alleged in this complaint and the nature of the relief sought, the individual participation of each affected member of a chapter under VVA-CT is not indispensable to the proper resolution of this lawsuit.

#### **Allegations as to NVCLR**

122. NVCLR is a Connecticut organization based in New Haven. Its purpose is to assist veterans with less than honorable discharge statuses and to educate the public about the stigma and struggles these veterans face.

123. NVCLR holds regular meetings of veterans and their family members in the New Haven area. It has aided veterans, especially but not exclusively African American veterans, in

seeking VA benefits and applying for discharge upgrades. In the 1980s, NVCLR led a successful campaign to erect a monument to Vietnam veterans in New Haven. This memorial was established at Long Wharf in 1988.

124. At least one NVCLR member received an other than honorable discharge based on conduct attributable to his undiagnosed PTSD from service in Vietnam and has applied to his Board for a discharge upgrade based on PTSD attributable to service but has been denied.

125. NVCLR brings this action on its own behalf and also on behalf of its members. NVCLR's membership includes at least one member of the proposed class who would have individual standing to pursue the claims set forth below. Because of the nature of the claims alleged in this complaint and the nature of the relief sought, the individual participation of each affected member under NVCLR is not indispensable to the proper resolution of this lawsuit.

#### **Allegations as to the Class Generally**

126. Approximately nine million U.S. military personnel served on active duty during the Vietnam War Era, of whom more than one-third served in the Southeast Asia Theater.

127. More than 260,000 veterans, about three percent of those who served during the Vietnam War Era, received other than honorable discharges.

128. A veteran with an other than honorable discharge is generally ineligible for numerous benefits to which he or she otherwise would be entitled, including disability compensation, education benefits, a military burial, and benefits for surviving family members.

129. Many veterans who served in the Vietnam Theater during the Vietnam War Era and received other than honorable discharges had developed PTSD during their service.

130. PTSD is a psychiatric disorder that can result from experiencing, witnessing, or confronting a traumatic event. Events that lead to PTSD are frequently life threatening. PTSD is

the most prevalent mental disorder arising from combat experience. Its symptoms include flashbacks or nightmares of the traumatic event; avoidance of anything associated with the trauma; and increased arousal, often manifested by difficulty concentrating and irritability.

131. In 2013, the American Psychological Association published the Diagnostic and Statistical Manual of Mental Disorders-5 (“DSM-5”), which moved PTSD from a class of anxiety disorders into a new class of trauma and stressor-related disorders.

132. The DSM-5 defines PTSD using eight criteria. These eight criteria provide that the individual seeking diagnosis must (A) have been exposed to a traumatic event; (B) persistently re-experience the traumatic event in intrusive ways; (C) persistently and effortfully avoid distressing trauma-related stimuli after the traumatic event; (D) experience negative alterations in cognitions and mood that began or worsened after the traumatic event; (E) experience trauma-related alterations in arousal and reactivity that began or worsened after the traumatic event; (F) experience symptoms for more than one month; (G) experience significant symptom-related distress or functional impairment; and (H) have symptoms that are not due to medication, substance use, or other illness.

133. Because PTSD is considered a mental disorder and is stigmatized, many veterans are reluctant to admit that they are struggling with PTSD. Even when veterans do seek help, the functional and social impairment PTSD causes often makes it difficult for these veterans to assert and provide support for claims that their PTSD affected their military service. In particular, these veterans often have a hard time explaining that the misconduct that led to their other than honorable discharges is attributable to undiagnosed PTSD. As a result, the Boards must take extra care in reviewing the records of veterans who bring PTSD-related claims.

134. None of the Vietnam veterans with PTSD attributable to service who received

other than honorable discharges before 1980 were, or could have been, diagnosed with PTSD on the date of their discharge, because the diagnosis did not exist at that time.

135. The National Vietnam Veterans Readjustment Study estimates that 30.9% of Vietnam veterans have suffered from PTSD. The study also indicates that incident rates of PTSD in 1990 were significantly elevated for veterans with high levels of warzone exposure. This study was based on the criteria for PTSD according to the then-current Diagnostic and Statistical Manual of Mental Disorders-III (“DSM-III”).

136. The DSM-5 lowers the threshold for a PTSD diagnosis compared to that in the DSM-III. Under current diagnostic standards, the percentage of Vietnam veterans who have suffered from PTSD is likely higher than 30.9%.

137. Approximately one third or more of the Vietnam veterans who received an other than honorable discharge—tens of thousands of veterans—have PTSD.

138. The military gave these servicemembers other than honorable discharges based on poor conduct such as unauthorized absence without leave, shirking, using drugs, or lashing out at comrades or superior officers. These behaviors, however, are typical of those who have recently experienced trauma and were symptoms of the veterans’ underlying, undiagnosed PTSD.

139. Today, in recognition that PTSD can cause behavior that might otherwise appear as deliberate misconduct, the military’s own regulations require that members of the armed forces “reasonably asserting post-traumatic stress disorder” receive a medical examination prior to administrative separation. 10 U.S.C. § 1177 (2012); *see also* National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 522 (2013).

140. Vietnam veterans, including those who served in theater, have been denied this opportunity for appropriate consideration of their PTSD, not only at the time of discharge, but

also in subsequent proceedings before the Boards.

141. The military has never conducted a comprehensive review of Vietnam War Era discharges to determine whether it erroneously and unjustly burdened disabled veterans who served in theater with other than honorable discharges. This failure has barred thousands of combat veterans from the benefits they deserve and to which they would otherwise be entitled.

142. Congress has authorized the Secretary of each military branch, acting through each branch's Board, to revise any military record when it is "necessary to correct an error or remove an injustice." 10 U.S.C. § 1552(a)(1) (2012). The Boards regularly exercise this power to upgrade the discharge status of a former service member. The Boards have "an abiding moral sanction to determine, insofar as possible, the true nature of an alleged injustice and to take steps to grant thorough and fitting relief." *Yee v. United States*, 512 F.2d 1383, 1387-88 (Ct. Cl. 1975) (citations omitted).

143. Recognizing the impact of PTSD in veterans' initial discharges and the importance of upgrades in such cases, Congress has in other contexts specifically directed the military to prioritize discharge upgrade requests from veterans diagnosed with PTSD attributable to military service or who otherwise raise PTSD as a ground for relief.

144. The Secretary of each military branch is statutorily required to establish procedures for the correction of military records. The Secretary of each military branch also exercises centralized control over its Board by appointing each Board member from among senior civilian employees of that branch. Board members review and make recommendations regarding each request for an upgrade in discharge status.

145. The work of the Boards passes through several stages of hierarchical review. Boards rely on a small corps of full-time senior analysts to prepare cases for review and draft

opinions. The work of these analysts is closely supervised by a senior supervisor who reviews the analysts' work product before presenting it to Board members for consideration. After the Board members make a recommendation, all upgrade approvals and any recommendations that include a dissenting opinion are approved or disapproved by the Deputy Assistant Secretary, acting for the Secretary.

146. When Vietnam veterans have duly applied to the Boards to upgrade an other than honorable discharge, the military has systematically denied applications involving evidence of PTSD attributable to military service.

147. Since 1993, Vietnam veterans asserting PTSD have made approximately 375 applications for upgrades of other than honorable discharges to the ABCMR, BCNR, and AFBCMR. Of these, only 4.53% have been granted.

148. In comparison, of all veterans who applied to the ABCMR (2009, 2010, and 2012) for any reason, or for discharge upgrades to the Army Discharge Review Board ("ADRB") (2009, 2010, and 2012) or NDRB (2007-2013), 30.58% of their records were corrected, according to the National Veterans Legal Services Program.

149. The difference in grant rates between Vietnam Era PTSD-specific applications (4.53%) and all veteran applications (30.58%) is statistically significant at a very high level of significance,  $p < .001$ .

150. Comparing only discharge upgrade requests from the ADRB and NDRB to discharge upgrade requests from the Vietnam Era PTSD-specific applications, veterans overall are still much more likely to get discharge upgrades than are Vietnam veterans with PTSD seeking discharge upgrades. This difference is statistically significant at a very high level of significance,  $p < .001$ .

151. The difference between the ABCMR's adjudication of applications by Vietnam veterans with PTSD as compared to all applications to the ABCMR is also statistically significant at a very high level of significance,  $p < .001$ . Veterans overall are 15.74 times more likely to receive record corrections from the ABCMR than are Vietnam veterans with PTSD seeking discharge upgrades.

152. When denying PTSD-based applications from Vietnam veterans, the ABCMR has frequently ignored the PTSD claims entirely. In other cases, the ABCMR has dismissed the claim for lack of evidence of a PTSD diagnosis in service medical records, in apparent willful disregard of the reality that PTSD was not a recognized medical diagnosis until 1980.

153. The experiences of individual Vietnam veterans who have applied for discharge upgrades reveal the Boards' failures to adequately consider PTSD claims and their discriminatory and near-categorical refusal to grant upgrades in such cases.

154. "John Doe" served in Vietnam, in the Air Force, and was discharged under other than honorable conditions. In 2006, "John Doe" applied to the AFBCMR for a discharge upgrade on the basis of PTSD. He submitted medical records and a personal statement. The Air Force could not determine the propriety of the discharge due to missing files, but the AFBCMR nevertheless denied his application, failing to mention his PTSD claim in its denial.

155. The military has failed to prioritize discharge upgrade requests from Vietnam veterans with PTSD. The military has failed to apply consistent and medically appropriate standards to assess the impact of PTSD attributable to service on the conduct that led to discharge, resulting in the Defendants' discriminatory and near-categorical denial of discharge upgrade applications by veterans who acquired PTSD from their service in the Vietnam Theater.

***The Proposed Class Definition***

156. This is a class action seeking equitable relief under Rule 23(b)(2) of the Federal Rules of Civil Procedure for violations of the Administrative Procedure Act, the Fifth Amendment, and § 504 of the Rehabilitation Act of 1973 (Counts I-III).

157. Individuals from four service branches (Army, Navy, Air Force, and Marine Corps) fall within the class proposed by this complaint.

158. The proposed class includes all veterans of the Vietnam War Era who served in the Vietnam Theater and: (a) were discharged under other than honorable conditions (also referred to as an undesirable discharge); (b) have not received discharge upgrades to honorable or to general (affirmed under uniform standards); and (c) have been diagnosed with PTSD attributable to their military service.

***The Proposed Class Satisfies the Requirements of Rule 23***

159. The members of the proposed class are so numerous that joinder of all members is impracticable.

160. The members' injuries derive from a unitary course of conduct by the centralized, hierarchical systems supervised and controlled by Defendants. Congress has authorized the Defendants under the same statute to act through their respective Boards to revise military records when "necessary to correct an error or remove an injustice." 10 U.S.C. § 1552(a)(1) (2012). Congress has also required Defendants to implement procedures for the correction of military records.

161. Many members of the proposed class are elderly and suffer the serious physical and psychological consequences of long-term PTSD.

162. There are questions of law and fact common to the proposed class, including but

not limited to:

- a. Whether the Defendants have failed to utilize consistent and medically appropriate standards when assessing how PTSD impacted class members' abilities to perform their duties when considering whether to upgrade their discharge statuses (either upon application or the Defendants' own initiative), in violation of the Fifth Amendment, the Administrative Procedure Act, and Section 504 of the Rehabilitation Act of 1973;
- b. Whether the Defendants have abused their discretion and acted arbitrarily and capriciously, in a manner unauthorized by law, by refusing to give appropriate consideration to class members' allegations that their misconduct was the result of undiagnosed and untreated PTSD, and therefore failing to upgrade class members' discharge statuses, in violation of the Administrative Procedure Act;
- c. Whether the Defendants' refusal and failure to recognize the effects of class members' PTSD, attributable to service, upon application or the Defendants' own initiative, have deprived class members of their property and liberty rights in violation of the Fifth Amendment;
- d. Whether the Defendants have, by reason of the class members' disability (PTSD), excluded class members from the participation in, denied class members the benefits of, or subjected class members to discrimination under any program or activity receiving federal financial assistance, in violation of Section 504 of the Rehabilitation Act of 1973;
- e. Whether the Defendants have failed to make reasonable modifications in their policies, practices, and procedures that are necessary to avoid discrimination against class members on the basis of their PTSD, in violation of Section 504 of the Rehabilitation Act of 1973; and
- f. Whether class members have suffered impermissibly the stigmatizing effects of

other than honorable discharges related to undiagnosed PTSD, which Defendants have refused to upgrade.

163. The claims of the individual Plaintiffs and of VVA, VVA-CT, and NVCLR members are typical of the claims of the proposed class members.

164. The Plaintiffs and their counsel will fairly and adequately protect the interests of the proposed class.

165. Defendants, by failing to properly consider the PTSD diagnoses of class members, have acted or refused to act on grounds that apply generally to the class, and therefore final injunctive relief and/or corresponding declaratory relief is appropriate respecting the class as a whole.

**LEGAL CLAIMS OF THE CLASS AND OF VVA, VVA-CT, AND NVCLR**

**Count I  
Violation of Administrative Procedure Act**

166. Individual Plaintiffs and VVA, VVA-CT, and NVCLR members, on behalf of themselves and the proposed class, reallege and incorporate herein by reference as though fully set forth, each and every allegation contained in Paragraphs 1 through 165 of this Complaint.

167. By refusing to properly consider PTSD in reviewing the Plaintiffs' and other class members' discharge statuses upon their own application or failing to reconsider the discharge statuses by the Defendants' own initiative, Defendants and the Boards through which they operate have engaged in arbitrary and capricious actions against those with PTSD attributable to service and have made decisions unsupported by substantial evidence and contrary to law.

168. This refusal and failure stigmatizes class members, interferes with their employment prospects, and bars them from VA benefits they deserve and to which they would otherwise be entitled. Where class members have requested reconsideration of past upgrade

decisions due to PTSD attributable to service, Defendants' denials of reconsideration in light of new evidence were arbitrary, capricious, and an abuse of discretion.

169. The Defendants' foregoing conduct violates the Administrative Procedure Act.

**Count II**  
**Violation of the Fifth Amendment to the United States Constitution**

170. Individual Plaintiffs and VVA, VVA-CT, and NVCLR members, on behalf of themselves and the proposed class, reallege and incorporate herein by reference as though fully set forth, each and every allegation contained in Paragraphs 1 through 165 of this Complaint.

171. The Due Process protections of the Fifth Amendment of the U.S. Constitution require that an administrative agency provide notice and an opportunity to be heard, and that it conduct adjudications in a fair and orderly manner.

172. Defendants, who are acting in their official capacities, have refused to utilize consistent and medically appropriate standards in assessing the impact of Plaintiffs' and other class members' PTSD attributable to service upon application, and also failed to use consistent and medically appropriate standards upon their own initiative. This has resulted in Defendants' general refusal and failure to correct class members' wrongful other than honorable discharges.

173. This refusal and failure stigmatizes class members, interferes with their employment prospects, and bars them from VA benefits they deserve and to which they would otherwise be entitled.

174. Defendants and the Boards through which they operate have unconstitutionally infringed upon Plaintiffs' property and liberty rights protected by the Due Process Clause of the Fifth Amendment.

175. The Defendants' foregoing conduct violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

**Count III**  
**Violation of Section 504 of the Rehabilitation Act of 1973**

176. Individual Plaintiffs and VVA, VVA-CT, and NVCLR members, on behalf of themselves and the proposed class, reallege and incorporate herein by reference as though fully set forth, each and every allegation contained in Paragraphs 1 through 165 of this Complaint.

177. Section 504 of the Rehabilitation Act of 1973 (“Section 504”) provides that “[n]o otherwise qualified individual with a disability . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a) (2012).

178. An individual with PTSD is an “individual with a disability” within the meaning of Section 504.

179. Defendants’ program or activity of reviewing military records to determine whether to upgrade the discharge statuses of former servicemembers has received substantial federal financial assistance at all relevant times and is a program or activity of a federal agency.

180. Defendants discriminate against individual Plaintiffs; and VVA, VVA-CT, and NVCLR members; and the proposed class members on the basis of their disability by refusing and failing to utilize consistent and medically appropriate standards for consideration of PTSD when reviewing the military records of Vietnam veterans to determine whether to upgrade their discharge statuses, and in their near-categorical refusal and failure to upgrade the discharge statuses of class members. As a result, Vietnam veterans with PTSD attributable to service cannot receive the benefits of Defendants’ review processes, including upgrades of their discharge statuses, and the benefits associated with such upgrades.

181. The regulations implementing Section 504 prohibit entities receiving federal financial assistance from utilizing “criteria or methods of administration that: (i) Subject

qualified handicapped persons to discrimination on the basis of handicap . . . [or] (ii) Defeat or substantially impair accomplishment of the objectives of the recipient's or DoD Component's program or activity with respect to handicapped persons." 32 C.F.R. § 56.8 (2014).

182. Defendants' criteria and methods of administration of their programs for reviewing military records to determine whether to upgrade the discharge statuses of former servicemembers violate the implementing regulations by failing to utilize consistent and medically appropriate standards for consideration of Plaintiffs' PTSD.

183. This failure (1) results in the near-categorical denial of applications from Vietnam veterans with PTSD, (2) subjects individual Plaintiffs; and VVA, VVA-CT, and NVCLR members; and proposed class members to discrimination, and (3) defeats the purposes of the Defendants' review processes, which include the review and correction of any military record when necessary to correct an error or remove an injustice, all in violation of Section 504.

184. Defendants are also violating Section 504 by failing to make reasonable modifications in their policies, practices, and procedures that are necessary to avoid discrimination against Vietnam veterans with PTSD attributable to service. Specifically, Defendants have failed to modify their procedures to include consistent and medically appropriate standards for assessing the impact of PTSD when determining whether to upgrade the discharge statuses of such veterans.

185. The Defendants' foregoing conduct violates Section 504.

**LEGAL CLAIMS OF INDIVIDUAL PLAINTIFFS**  
**(Monk, Marret, Siders, Cottam, and Davis)**

**Count IV**  
**Violations of Administrative Procedure Act**

186. Individual Plaintiffs reallege and incorporate herein by reference as though fully

set forth, each and every allegation contained in Paragraphs 1 through 165 of this Complaint.

187. The BCNR's constructive denial of Mr. Monk's application was arbitrary, capricious, unsupported by substantial evidence, contrary to law, and an abuse of discretion, considered in light of his PTSD attributable to service.

188. The ABCMR's denial of Mr. Davis' application was arbitrary, capricious, unsupported by substantial evidence, contrary to law, and an abuse of discretion, considered in light of his PTSD attributable to service and in light of the fact that he was denied the opportunity to consult with counsel prior to receiving his other than honorable discharge.

189. The BCNR and ABCMR's denials of the applications and motions to reconsider filed by Mr. Marret, Mr. Siders, and Mr. Cottam were arbitrary, capricious, unsupported by substantial evidence, contrary to law, and an abuse of discretion, considered in light of their PTSD attributable to service.

190. The Defendants' foregoing conduct violates the Administrative Procedure Act.

**Count V**  
**Violation of Fifth Amendment of the United States Constitution**

191. Individual Plaintiffs reallege and incorporate herein by reference as though fully set forth, each and every allegation contained in Paragraphs 1 through 165 of this Complaint.

192. The Due Process protections of the Fifth Amendment of the U.S. Constitution require that an administrative agency provide notice and an opportunity to be heard, and that it conduct adjudications in a fair and orderly manner.

193. By refusing and failing to utilize medically appropriate standards in assessing the impact of PTSD attributable to service when determining whether to upgrade discharge statuses, and by refusing and failing to correct the wrongful other than honorable discharges of individual Plaintiffs, Defendants Mr. McHugh and Mr. Mabus, acting in their official capacities, and the

Boards through which they operate have unconstitutionally infringed upon property and liberty rights protected by the Fifth Amendment of the U.S. Constitution.

194. Defendant Mr. McHugh also deprived Mr. Davis of due process of the law guaranteed by the Fifth Amendment by refusing to upgrade his discharge status, because Mr. Davis should have been afforded the opportunity to consult with counsel prior to receiving his other than honorable discharge.

195. In addition, Defendants Mr. Mabus and Mr. McHugh deprived Mr. Monk and Mr. Davis of the equal protection of the law guaranteed by the Fifth Amendment by refusing to upgrade their discharge statuses, which resulted from Vietnam Era discharge practices that had both a racially discriminatory impact and a racially discriminatory purpose.

196. The Defendants' foregoing conduct violates the Fifth Amendment of the U.S. Constitution.

**Count VI**  
**Violation of Section 504 of the Rehabilitation Act of 1973**

197. Individual Plaintiffs reallege and incorporate herein by reference as though fully set forth, each and every allegation contained in Paragraphs 1 through 165 of this Complaint.

198. Defendants Mr. Mabus and Mr. McHugh, acting through the BCNR and ABCMR respectively, discriminated against the individual Plaintiffs on the basis of their disability of PTSD attributable to service by refusing and failing to utilize consistent and medically appropriate standards for consideration of PTSD when reviewing their military records to determine whether to upgrade their discharge statuses.

199. Defendants Mr. Mabus and Mr. McHugh also discriminated against the individual Plaintiffs by refusing and failing to correct each plaintiff's other than honorable discharge, which was given as a result of conduct stemming from then-undiagnosed PTSD.

200. As a result of this discrimination on the basis of PTSD, the individual Plaintiffs have been denied the benefits of Defendants' review processes, including an upgrade of each Plaintiff's discharge status and the benefits associated with such an upgrade.

201. The refusal and failure of the BCNR and the ABCMR to utilize medically appropriate standards for consideration of the individual Plaintiffs' PTSD has subjected each individual Plaintiff to discrimination and defeated the purposes of the Defendants' review processes, which include the review and correction of any military record when necessary to correct an error or remove an injustice.

202. Defendants Mr. Mabus and Mr. McHugh, acting through the BCNR and ABCMR respectively, have also violated Section 504 by failing to make reasonable modifications to the policies, practices and procedures of the BCNR and ABCMR necessary to avoid discrimination against Vietnam veterans with PTSD attributable to service, such as the individual Plaintiffs.

203. The Defendants' foregoing conduct violates Section 504.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

- (1) Grant all appropriate equitable relief to address past injury and to restrain future injury of Plaintiffs and members of the proposed class by Defendants;
- (2) Direct, by issuance of an injunction, measures sufficient to ensure that Defendants utilize consistent and medically appropriate standards for considering the effects of class members' PTSD when determining whether to upgrade their discharge statuses;
- (3) Direct, by issuance of an injunction, that the Defendants cease to discriminate solely on the basis of disability, and make reasonable modifications in their policies, practices, and procedures that are necessary to avoid discrimination against Vietnam veterans with PTSD

attributable to service;

(4) Direct, by issuance of an injunction, that the discharge statuses of individual Plaintiffs be upgraded to Honorable or to General (Under Honorable Conditions) affirmed under uniform standards, or in the alternative, vacate and remand the respective cases of each individual Plaintiff to the BCNR and ABCMR;

(5) Award attorneys' fees and costs to Plaintiffs; and

(6) Grant any other and further relief that the Court deems just and proper.

Dated: March 3, 2014  
New Haven, Connecticut

Respectfully submitted,

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